

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

DANIEL BIRD, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

KRONOS SOLAR, LLC

AND PACKRONOS, LLC

Defendants.

Case No.  
SA-24-CA-00513-XR

**JURY TRIAL DEMANDED**

**JOINT FED. R. CIV. P. 26 REPORT**

Pursuant to this Court's form, the Parties file this joint Rule 26 report as follows:

1. Are there any outstanding jurisdictional issues? For removed cases based on diversity jurisdiction, do the parties agree that the amount in controversy exceeded \$75,000 at the time of removal? If not, each party should state its position on the amount in controversy.  
**Response:** There are no outstanding jurisdictional issues.

2. Are there any unserved parties? If more than 90 days have passed since the filing of the Complaint or petition, should these unserved parties be dismissed?  
**Response:** There are no unserved parties.

3. What are the causes of action, defenses, and counterclaims in this case? What are the elements of the cause(s) of action, defenses, and counterclaims pled?  
**Plaintiff's Statement:** The Plaintiff, Daniel Bird, asserts a singular class action cause of action against the Defendant for violating the Do Not Call Registry provisions of the Federal Telephone Consumer Protection Act against the Defendants for sending text messages selling their solar panel services to his cellular telephone listed on the DNC without his consent. The elements this claim are: (1) the defendant called or texted a telephone number; (2) registered on the National Do Not Call Registry; (3) at least twice in any 12-month period; (4) for the purpose initiating any telephone solicitation. 47 C.F.R. § 64.1200(c)(2); 47 U.S.C. § 227(c)(5). Defendants do not deny the fact the calls took place, but raise a number of defenses as to the appropriateness of the class claims, whether the conduct violated the TCPA, and other similar defenses.

Defendant's Statement: Defendant, Kronos Solar, LLC and PacKronos, LLC have several defenses to assert regarding the circumstances under which the text messages were sent as well as how the Plaintiff's telephone number was acquired. The Defendant additionally asserts that there are defenses that mitigate its exposure to damages. The Defendant denies that this action can meet the requirements of Federal Rule of Civil Procedure 23 for the Plaintiff to certify a class.

4. Are there any agreements or stipulations that can be made about any facts in this case or any element in the cause(s) of action?

**Response:** The Plaintiff and Defendants are in agreement and stipulate that they sent the text messages at issue.

5. State the parties' views and proposals on all items identified in Fed. R. Civ. P. 26(f)(3).

**Plaintiff's Response:** The Plaintiff states as follows:

- a. No changes are necessary.
  - b. Plaintiff will need to seek discovery on the calling/texting conduct at issue, including the calling records themselves, the content and scripting of the messages, the number of calls that were sent to the Plaintiff and the class, Defendants' policies and procedures regarding TCPA compliance. The Plaintiff will need to take between 3-5 depositions, including of the Defendants' 30(b)(6) representatives, and other individual Rule 30 witnesses, any of the Defendants' experts. The Defendant will seek discovery as to the Plaintiff's text and call logs. The Defendant will require 1 to 3 depositions
  - c. The Plaintiff does not anticipate any such issues at this time. The Defendant does not anticipate any such issues at this time.
  - d. The Plaintiff does not anticipate any such issues at this time. The Defendant does not anticipate any such issues at this time.
  - e. The Plaintiff proposes no changes to the limitations on discovery. The Defendant seeks to limit discovery to Kronos Solar, LLC as PacKronos is not a subsidiary or parent company of Kronos Solar and is not a proper party defendant.
  - f. The Plaintiff seeks issuance of no additional orders at this time. The Defendant requests that depositions and any trade secret information is not made part of the public record and that they remain sealed. The Defendant requests that PacKronos be removed as a party Defendant in this action.
6. What, if any, discovery has been completed? What discovery remains to be done? Have the parties considered conducting discovery in phases?

**Response:** The parties will commence discovery shortly after they have their Rule 26(f) conference. Discovery is still in its early phases. With respect to Plaintiff, the Plaintiff will need to seek basic discovery as to the size and nature of the classwide calling conduct, including classwide calling records. The Parties believe that there is no necessity for phased discovery. The Defendant company Kronos Solar is a small corporation with less than 2 full-time employees and requests that discovery requests are made in manageable phases.

7. What, if any, discovery disputes exist?

**Response:** There are no current discovery disputes.

8. Have the parties discussed the desirability of filing a proposed order pursuant to Federal Rule of Evidence 502?

**Response:** The Parties do not seek an order under Rule 502 at this time but may revisit the issue in the event that it becomes appropriate. The Defendant requests an order under Rule 502.

9. Have the parties discussed mediation?

**Plaintiff's Response:** The Plaintiff remains willing to mediate this case, however, the Plaintiff also requires information about the nature, scope, and extent of the calling conduct at issue here, including specifically with respect to class members. The Defendant requests that the parties mediate on an expedited basis as it is a small company and is confident that there are no other party Plaintiffs and a protracted litigation will be finically and reputationally devastating.

PLAINTIFF,  
By his attorney

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